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FEDERAL COMMUNICATIONS COMMISSION
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COMMISSION APPLIES "PERMIT BUT DISCLOSE" EX PARTE RULES TO PROCEEDINGS RELATED TO RELOCATION OF 18 GHz DEMS LICENSEES TO 24 GHz BAND

By Order released on March 14, 1997, the Commission took various actions to facilitate the relocation of Digital Electronic Message Service (DEMS) licensees from the 18.82-18.92 GHz and 19.16-19.26 GHz bands (18 GHz band) to the 24.25-24.45 GHz and 25.05-25.25 GHz bands (24 GHz band). *See* Amendment of the Commission's Rules To Relocate the Digital Electronic Message Service from the 18 GHz Band to the 24 GHz Band and To Allocate the 24 GHz Band for Fixed Services, ET Docket No. 97-99, Order, FCC 97-95, released Mar. 14, 1997 (*DEMS Relocation Order*). Petitions for reconsideration or clarification have been filed by several parties. This proceeding is thus subject to the "permit but disclose" rules for *ex parte* purposes under Section 1.1206(a)(2) of the Commission's Rules, 47 CFR § 1.1206(a)(2).

The *DEMS Relocation Order* proceeding is related to a number of other Commission actions and proceedings, some of which would otherwise be treated as restricted proceedings for *ex parte* purposes under Section 1.1208 of the Commission's Rules, 47 CFR § 1.1208. First, the *DEMS Relocation Order* requires a series of license modification actions to be taken. For example, the *DEMS Relocation Order* directed that all DEMS licenses for the 18 GHz band be modified immediately to prohibit operations in certain service areas in Washington, D.C., and Denver, Colorado, to prohibit all other operations in the 18 GHz band as of January 1, 2001, and to permit DEMS operations in the 24 GHz band. Further, the *DEMS Relocation Order* directed that all licenses for low power systems in the 18 GHz band be modified to prohibit new low power operations in the Washington and Denver areas. Incumbent licensees were given 30 days from the date of notification by the Wireless Telecommunications Bureau to protest their license modifications.

Second, applications filed by Microwave Services, Inc. (MSI), FCC File Nos. 9607682 *et al.*, for "nodal stations within markets for which a license exists" in the DEMS service in the 18 GHz band, are pending before the Commission. *See DEMS Relocation Order* at para. 16. Teledesic Corporation has filed a consolidated petition to deny these applications, which included a petition to determine the status of 18 GHz DEMS licenses held by MSI and its affiliated company, Digital Services Corporation (DSC). Although a joint motion for withdrawal of the

Teledesic consolidated petition and responsive pleadings has been filed by MSI and Teledesic, that motion has not yet been acted upon by the Wireless Telecommunications Bureau. Under the terms of the *DEMS Relocation Order*, the DEMS licenses associated with Teledesic's consolidated petition have been ordered to be relocated to the 24 GHz band. Further, the *DEMS Relocation Order* stated that the Commission would grant the pending applications for nodal stations. Some of the petitions for reconsideration of the *DEMS Relocation Order* raise issues addressed by the Teledesic petition.

Finally, pending before the Commission are applications for new exclusive geographic areas in the DEMS service in the 18 GHz band, filed by MSI, DMT L.L.C. (a company affiliated with the Associated Group) and FirstMark Communications, Inc. See Freeze on the Filing of Applications for New Licenses, Amendments, and Modifications in the 18.8-19.3 GHz Frequency Band, Order, DA 96-1481, released Aug. 30, 1996, at para. 2 & note 5. Some of these applications are the subject of proceedings that would otherwise be treated as restricted proceedings for *ex parte* purposes under Section 1.1208 of the Commission's Rules, 47 CFR § 1.1208.

In view of the interrelated nature of these proceedings and the potential impact of certain of the proceedings on persons not parties to the proceedings, it would be in the public interest to treat all of these proceedings as permit but disclose proceedings under the *ex parte* rules. See Sections 1.1200(a) and 1.1206 of the Commission's Rules, 47 CFR §§ 1.1200(a), 1.1206. Therefore, any *ex parte* presentations that are made with respect to the issues involved in the subject proceedings subsequent to the release of this Public Notice will be permissible but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's Rules, 47 CFR § 1.1206(b). Further, any party or person who has previously made *ex parte* presentations to Commissioners or Commission staff in connection with any of the specified proceedings, but who has not made a required filing with respect to each such presentation, should promptly file a summary consistent with the provisions of Section 1.1206(b) of the Commission's Rules, 47 CFR § 1.1206(b).

For further information, contact Peter G. Wolfe, Wireless Telecommunications Bureau, at (202) 418-1310 or Chris Murphy, International Bureau, at (202) 418-2373.

By the Chief, International Bureau, and the Acting Chief, Wireless Telecommunications Bureau.

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